

APPLICANTS:
Gary & Debra L. Leadore

REQUEST: A variance to locate an oversized garage within the required front yard setback in the Agricultural District

HEARING DATE: November 1, 2006

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

Case No. 5565

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Gary T. Leadore

CO-APPLICANT: Debra L. Leadore

LOCATION: 2418 Old Robin Hood Road, Havre de Grace
Tax Map: 52 / Grid: 1B / Parcel: 251
Second (2nd) Election District

ZONING: AG/Agricultural

REQUEST: A variance, pursuant to Section 267-34C, Table II, of the Harford County Code, to permit a garage to be located within the 70 foot front yard setback (58 foot average setback proposed), and a variance, pursuant to Section 267-26C(1), to allow a garage to exceed the height of the house in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

The subject property is a 2.13 acre parcel, zoned agricultural, improved by a four bedroom rancher of approximately 2,000 square feet in size, with no basement and, according to the Applicant, a "low profile" roof.

An existing 10 foot by 17 foot black bear shed is also located on the property in the approximate area in which the garage is proposed. A drainage swale is located to the east side of the property, approximately behind the black bear structure. The swale, according to the Staff Report, carries water which flows under Robin Hood Road. Another shed, which the Applicant referred to as his "shop", is also located on the property. A blacktop driveway accesses the improvements.

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According to the Applicant, the septic system is located to the rear of the house. Much of the lot is wooded. This is confirmed by the Staff Report which indicates that the property is approximately ninety-five percent (95%) wooded. The Applicant expresses a need for the garage proposed, which would be 24 feet by 26 feet by 20 feet in height, for additional storage. The Applicant describes his house as having very little storage space. The house has no basement and its attic area is very limited because of the low profile roof. While the Applicant indicated that there is a slight downward change in elevation from the house to the location proposed for the garage, in fact, the garage will be approximately 4 feet higher than the height of the house. Thus, the request for a height variance.

The Applicant indicates that the site of the present black bear structure is the only feasible location on the Applicants' property for the construction of such a garage. At that location the garage would come to within 58 feet of the road, whereas the required setback is 70 feet. The garage cannot be set back farther away from the road because of the existing swale and mature trees in that area. The Applicant has spoken to his neighbors, and no neighbor expressed any opposition.

For the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune confirmed that the height variance requested is approximately 4 feet.

Mr. McClune and the Department are of the opinion that the property is unique. A small tributary of Swan Creek crosses the subject property approximately 80 feet behind the dwelling. To the west side of the property is a drainage swale, with mature trees behind the swale and surrounding it. The property's septic system is located to the rear of the dwelling. The dwelling itself is nonconforming, being located only about 60 feet from the front property line with the applicable required setback being 70 feet. Mr. McClune stated that on Robin Hood Road is located a series of homes, none of which present a unified setback. Distances from the roadway of the homes are varied in the neighborhood. Accordingly, the home of the Applicants, and the garage which would intrude into the required front yard setback, would not look out of place.

The Department would, in fact, prefer to see the garage located as proposed rather than farther back away from the road. If this lot were recorded today, a 75 foot Natural Resources buffer would be required. This would prohibit the garage from being built anywhere except as proposed. The Department feels that the proposed location is best for the preservation of natural resources.

Mr. McClune stated that the house itself is unusually narrow. The roof has a very low peak. Upon further questioning, Mr. Leadore stated that the home, in fact, had been built around an existing mobile home. The mobile home was then torn out after the walls and roof had been constructed. This clearly accounts for the very unusual shape of the home, which quite apparently has an extremely shallow roof peak.

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Mr. McClune concluded by stating that the garage proposed is similar to others in the neighborhood, and the fact that it will be higher than the existing home will not be noticeable from the roadway or adjoining properties.

There was no testimony or evidence presented in opposition.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
 - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

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Section 267-26C(1) of the Harford County Code states:

“(1) In the AG, RR, R1, R2, R3, R4 and VR Districts, the accessory use or structure shall neither exceed fifty percent (50%) of the square footage of habitable space nor exceed the height of the principle use or structure. This does not apply to agricultural structures, nor does it affect the provisions of Section 267-24, Exceptions and modifications to minimum height requirements. No accessory structure shall be used for living quarters, the storage of contractors’ equipment or the conducting of any business unless otherwise provided in this Part 1.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants are requesting two variances – the first is a variance to the front yard setback to allow them to build a garage which impacts the required 70 foot front yard setback by 12 feet. The second variance is to allow the garage to be built with a height of 20 feet which will be approximately 4 feet higher than the Applicants’ one-story home.

It is quite apparent that the lot is unique. Much of the property is heavily wooded. The property carries a small tributary of Swan Creek across its middle; the property is also encumbered by a drainage swale. Mr. McClune stated that the property would be heavily encumbered by a Natural Resources District and buffers if the lot were recorded today. The Department prefers to see the garage built as proposed which, the Department agrees, is the most practical location for such a garage. The garage could not be located to the other side or to the rear of the property because of existing setbacks and septic areas. The garage cannot be located farther away from the road because of the existing swale, drainage features and vegetation in that area.

It is accordingly found that the property is unique and as a result the Applicants suffer a hardship in not being able to construct a garage similar to others throughout the neighborhood and Harford County. Furthermore, the granting of the setback variance would have no adverse impact on any adjoining property owner or property.

The issue of the height variance is more problematical. Typically, height variances are not granted as the applicable standard of uniqueness can seldom be met. However, the Applicants present a persuasive case. Their home was actually built around a pre-existing mobile home. The home which was built around that mobile home was of the approximate dimensions of the mobile home. Once built the mobile home was removed from inside the home. Certainly, a very unusual construction plan, with the resulting structure appearing in shape and dimension to be a modular home, although somewhat larger in dimension than is normal. The resulting roof line is extremely shallow. Obviously, if built to more normal specifications the roof pitch would have been higher which would have allowed the Applicants to easily build the garage requested, with the dimensions requested, without a height variance.

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Accordingly, while certainly not a particularly easy variance to obtain, the Applicants have shown that they suffer from a set of circumstances which are obviously very unique, and most likely unique to the Applicants alone. These unique circumstances have created the Applicants a hardship in that they are not able to build a garage similar to others throughout the neighborhood without the requested height variance.

The granting of the variance, which is the minimum relief necessary to alleviate the hardship, will cause no adverse impact.

CONCLUSION:

It is, accordingly, recommended that the requested variances be granted, subject to:

1. The Applicants shall obtain all necessary permits and inspections for the garage.
2. The garage shall not be used for living area.
3. The garage shall not be used in the furtherance of a business.

Date: December 6, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JANUARY 5, 2007.